

February 14, 1997
L-97-5

TO : John L. Thoresdale
Director of Policy and Systems

FROM : Steven A. Bartholow
Deputy General Counsel

SUBJECT : The Metropolitan Transportation Authority
Defined Contribution Pension Plan for
Non-agreement Employees

This is in response to a memorandum dated August 19, 1996, requesting an opinion as to whether the above-referenced pension plan is a supplemental pension plan within the meaning of section 2(h)(2) of the Railroad Retirement Act. The plan, which is maintained by the Metro-North Commuter Railroad Company (BA No. 3345), covers non-agreement employees of Metro-North.¹

The pension plan is a defined contribution plan under which Metro-North is obligated to contribute 3% of each eligible employee's compensation to the plan, regardless of profit (Article III). This plan replaced the Metro-North Commuter Railroad Company Cash Balance Plan for non-agreement employees, which was approved by this office on June 28, 1990.

In Legal Opinion 88-4 we held that a similar Metropolitan Transportation Authority pension plan was a supplemental pension plan under section 2(h)(2) of the Act. That plan, the Metropolitan Transportation Authority Defined Contribution Pension Plan for Agreement Employees, was found to be a money purchase plan which required employer contributions, regardless of profits. See 20 CFR 216.42(b).

¹ The plan also covers those employees who are technically-covered members of the Transportation-Communications International Union and who would otherwise qualify as eligible employees.

It is our opinion that the Metropolitan Transportation Authority Defined Contribution Plan for Non-agreement Employees is a supplemental pension plan within the meaning of section 2(h)(2) of the Railroad Retirement Act.

Article VII of the plan provides that, as a method of distribution of a participant's vested benefits, Metro-North may purchase an annuity from an insurance company to provide periodic payments to a participant and the spouse of the participant. Any periodic payment made under the annuity contract should be reported to the Board as a monthly payment under a supplemental pension plan. In the event that a participant takes a lump-sum distribution which he or she then rolls over into an individual retirement account, such roll-over amounts should be reported as a lump sum distribution, effective the date the funds are forwarded to the individual retirement account.